

The State of Kansas contends the Judge erred by finding a date of accident different from that alleged in the Application for Hearing. Further, the State contends the date of accident should be June 30, 1993, the last date alleged in the series identified in the Application for Hearing and, therefore, claimant should be denied permanent partial disability benefits because he failed to prove he had a permanent injury or impairment as

of that date and also failed to prove he was unable to earn full wages the requisite period of time set forth in K.S.A. 44-501(c).

The only issues before the Board on this appeal are:

- (1) Did the Administrative Law Judge err by finding May 31, 1997, as the date of accident?
- (2) If so, was claimant unable to earn full wages the requisite period set forth by K.S.A. 44-501(c) for a repetitive use injury ending on June 30, 1993?
- (3) If the appropriate date of accident is June 30, 1993, did claimant prove permanent impairment or injury as of that date?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

- (1) John MacMillan worked for the State of Kansas as an engineering technician for 39½ years before retiring on May 31, 1997. Mr. MacMillan first developed symptoms in his right arm in 1990, which was shortly after he began to use a computer and mouse to perform his work. Despite ongoing and progressively worsening symptoms in his right upper extremity, Mr. MacMillan continued to work for the State until he took early retirement.
- (2) The parties stipulated that Mr. MacMillan sustained personal injury by accident arising out of and in the course of employment. But the parties could not agree to the appropriate date of accident for the repetitive use injury sustained.
- (3) The Appeals Board finds that Mr. MacMillan sustained a series of repetitive mini-traumas to his right upper extremity each and every day that he worked for the State through his last day of work on May 31, 1997. The mini-trauma was caused by using computer equipment on the job, which continued through the last day of work.
- (4) The Board also finds that Mr. MacMillan quit work because of the injury to his right upper extremity.
- (5) Judge Benedict averaged the functional impairment ratings provided by Drs. Delgado and Koprivica and found that Mr. MacMillan sustained a 15.5 percent functional impairment to the right upper extremity. Because the parties do not dispute that finding, the Appeals Board adopts it as its own.

CONCLUSIONS OF LAW

The Award should be affirmed.

(1) When a worker leaves work because of a repetitive trauma injury, the appropriate date of accident for purposes of computing an award is the last day worked.¹

(2) Because Mr. MacMillan continued to sustain repetitive micro-traumas through his last day of work and because he stopped working for the State due to his ever progressing right upper extremity injury, the appropriate date of accident for this series of accidental injuries is the last day of work on May 31, 1997.

(3) Workers compensation statutes are to be liberally construed to effect legislative intent and award compensation to a worker where it is reasonably possible to do so.²

(4) Those administering the Workers Compensation Act are not bound by technical rules of procedure, but all are required to give the parties a reasonable opportunity to be heard and to present their evidence, to insure the parties an expeditious hearing, and to act reasonably and without partiality.³

(5) In Drennon,⁴ the Kansas Supreme Court held that any procedure that is appropriate and not prohibited by the Workers Compensation Act may be utilized when those charged with administering the law act reasonably and without partiality.

(6) Failure to amend an initial claim to include a later accident is not fatal. The Kansas Supreme Court has previously held that an employer was not prejudiced and that a worker was entitled to receive compensation for two separate accidents although the claim initially filed varied from the evidence presented and the worker failed to amend the initial claim to include the second accident.⁵

(7) Avoiding cumbersome procedures and technicalities of pleadings is an important objective of workers compensation law.⁶

(8) The State had knowledge of Mr. MacMillan's ongoing overuse injury to his right upper extremity. Therefore, the State cannot contend it was prejudiced or lacked notice of the injury as it progressed through May 31, 1997. As the State's counsel candidly admitted at oral argument before the Appeals Board, the State is not claiming surprise. The State

¹Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

²Kinder v. Murray & Sons Construction Co., Inc., Docket No. 76,296 (Kan. 1998).

³K.S.A. 1997 Supp. 44-523(a).

⁴Drennon v. Braden Drilling Co., Inc., 207 Kan. 202, 483 P.2d 1022 (1971).

⁵Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988).

⁶Pyeatt at 205.

specifically made the date of accident an issue when the Judge addressed the parties' stipulations at the regular hearing.

(9) The Appeals Board concludes that the Administrative Law Judge had the authority to find that May 31, 1997, was the appropriate date of accident for computation purposes for the series of repetitive mini-traumas in question.

(10) The State contends that Mr. MacMillan should be denied permanent partial disability benefits because he was not disabled for the requisite period required by K.S.A. 44-501(c). The Appeals Board disagrees.

(11) Before being amended on April 4, 1996, K.S.A. 44-501(c) prevented an employee from receiving permanent partial disability benefits unless the injury disabled the "employee for a period of at least one week from earning full wages at the work at which the employee is employed."⁷ But the 1996 Kansas legislature deleted the requirements that an employee be disabled for a requisite period. Therefore, the State's argument is rejected as the appropriate date of accident for the period of injury in question is May 31, 1997. And K.S.A. 1996 Supp. 44-501(c) does not require Mr. MacMillan to have been disabled from earning full wages for any particular period before he is entitled to receive permanent partial disability benefits.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated January 29, 1998, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Post, Topeka, KS
Jeff K. Cooper, Topeka, KS
Bryce D. Benedict, Administrative Law Judge

⁷Boucher v. Peerless Products, Inc., 21 Kan. App.2d 977, 911 P.2d 198, *rev. denied* 260 Kan. 991 (1996).

JOHN P. MACMILLAN

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DOCKET NO. 184,813

Philip S. Harness, Director